Supreme Court, U. S.
FILED
SEP 11 1975
MICHAEL RODAK, JR. CLERK

No. 75-19

In the Supreme Court of the United States

OCTOBER TERM, 1975

UNITED STATES OF AMERICA, PETITIONER

v.

DOMINGA SANTANA AND WILLIAM ALEJANDRO

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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This memorandum addresses respondents' assertion that the government did not present to the court of appeals the arguments contained in our petition. Respondents' contention is inaccurate.

Respondents were arrested inside respondent Santana's residence. The district court concluded that "if this event had taken place in other than a residence it may very well have supported a warrantless entry for either search or arrest, but under the circumstances the court believes that a warrant could have been obtained for either a search or an arrest" (Pet. App. 5a).

The government's brief on appeal[1] (p. 8) contained a single argument: "The arrest of the defendants * * * was proper under all the circumstances of this case and, therefore, [the seized narcotics] should not have been suppressed." The brief went on (*ibid.*): "[T]here is no question but that the arrests of both [respondents] were lawful.

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[1]A copy of the brief is being lodged with the clerk of this Court.

It has long been the law, both in the Commonwealth of Pennsylvania and in the federal courts, that an officer may arrest without a warrant when there is probable cause [to believe] that a felony has been committed and that the person being arrested has committed the felony."

The brief then considered the possibility that entry into Santana's vestibule affected the application of this rule in the present case. It argued (*id.* at 9): "The narrow question before this Court is whether, under all the circumstances of this case, the arrest of the defendants without a warrant was reasonable." The brief cited and discussed two prior Third Circuit cases (*United States* v. *Davis*, 461 F.2d 1026; *United States* v. *Rubin*, 474 F.2d 262) that had upheld warrantless entries into houses or apartments to make an arrest (*id.* at 9-12). Following the analysis the court of appeals had used in *Rubin* and *Davis*, the brief urged a number of reasons for upholding the lawfulness of the entry into Santana's residence (*id.* at 14-18): (1) Word of McCafferty's arrest would quickly get back to Santana; (2) Santana might destroy the narcotics; (3) Santana might remove or destroy the marked money; (4) Santana retreated as the police approached; otherwise, the officers would have made the arrest outdoors; (5) There was no forcible entry; (6) There was no time to obtain a warrant.

We think there can be no doubt that this brief adequately presented to the court of appeals both the questions we have presented in our petition and the analysis with which our petition approached those questions. Respondents' contention that we are raising issues in this Court for the first time is thus erroneous and provides no justification for denying the petition.

For the reasons stated in the petition, it is respectfully submitted that the petition for a writ of certiorari should be granted.

ROBERT H. BORK,
Solicitor General.

SEPTEMBER 1975.